and consequently under admiralty jurisdiction. *The Max Morris* (1890) 137 U. S. 1. In the leading case in this connection, *Workman* v. *The Mayor of New York* (1900) 179 U. S. 552, reversing the lower court, which, in accordance with the general rule, had held the city not liable, the Supreme Court held that the city of New York was liable *in personam* for damage caused by one of its fire-boats, the fire department being "an integral branch of local administration." The decision is a square assertion of the view that protection from fire is not a State function. On the other hand, a previous federal case, *Thompson Nav. Co.* v. *Chicago* (1897) 79 Fed. 984, had reached exactly the same result under the other theory. Since by its view the fire service was a State function, the individuals guilty of negligence were not the servants of the city. But as the liability in admiralty may be based on the *ownership* of the vessel causing the injury, the city as owner was held without regard to its relationship with those operating the vessel.

Relying upon the doctrine of *Workman* v. *City of New York*, supra, the United States District Court for the District of Oregon has recently held the Port of Portland, a municipal corporation organized with purely governmental functions, for harbor maintenance, to be liable *in personam* for the negligence of its vessels. *U. S.* v. *Port of Portland* (1906) 145 Fed. 865. On account of the peculiar nature of this "municipality," the decision seems to have carried the rule of *Workman* v. *City of New York* to unwarranted lengths. Clearly the liability might have been imposed under the theory of *Thompson Nav. Co.* v. *Chicago*, supra, since the ownership of the vessels by the Port was undisputed. It might equally well have been placed on the ordinary theory of negligence, the State in creating a municipality of solely governmental functions with power to "sue and be sued" having virtually submitted to the ordinary tribunals in respect of such matters. But since the corporation was admittedly created as "an arm of the State, to perform its functions" a capacity entirely inconsistent with "local administration" as the phrase was used in *Workman* v. *City of New York*, it would seem that the theory of the latter case was entirely inapplicable.

EFFECT OF DURESS UPON MARRIAGE.—In a recent Mississippi case in which the insured was coerced into a marriage by duress, which was never consummated by cohabitation the question arose whether the "wife" was entitled to the insurance money payable to the "widow." The court held that the pretended wife was not entitled to the money because she was not the widow of the insured. The theory of the case is that a marriage induced by such duress is absolutely void and liable to collateral attack, *Grand Lodge* v. *Smith* (1906) 42 So. 89.

Despite a great deal of confusion among the authorities, the almost unanimous view of the text writers is that such marriage is absolutely void. Bishop, Mar., Div. & Sep. § 450-550; 1 Tyler Inf. & Cov., 2nd ed., Ch. 40; 2 Kent, 8 ed., 40. And as a matter of principle this view would seem to be correct. It is recognized that any fraud or duress, which prevents the mind from following the act, vitiates an ordinary contract, *Foshay* v. *Ferguson* (1843) 5 Hill 155. And, although marriage is some-

thing more than a contract, it seems that the consensus required is to be tested by much the same criterion. *Dalrymple* v. *Dalrymple* (1811) 2 Hag. Consis. 54, 104; *Terlat* v. *Gojon* (N. Y. 1825) Hop. Ch. 478, 483, 487. If the fraud is of such character as to prevent either party from knowing that a marriage is being performed, or from intending to enter into it, there has been no marriage. The same is true if either party acts under such a degree of duress as to prevent the independent exercise of his will. In such case there is no more meeting of the minds than if the marriage had been performed without the knowledge of the parties. *Mountholly* v. *Andover* (1839) 11 Vt. 226. If the marriage is void, it follows that it may be impeached in any proceeding in which it is drawn in question. *Riddlesden* v. *Wogan* (1602) Cro. Eliz. 858; *Farmington* v. *Somersworth* (1863) 44 N. H. 589.

The weight of authority, however, is that the marriage is only voidable. *State* v. *Lowell* (1899) 78 Minn. 166; *Lacoste* v. *Guidroz* (1895) 47 La. Ann. 295; *Tompert* v. *Tompert* (Ky. 1877) 13 Bush 326. Of these cases, those involving fraud or duress which merely act upon the mind to the extent of influencing the intention without supplanting the will, are supportable. But they lay down the doctrine more broadly that fraud and duress in any case can render the marriage only voidable and the dicta of many judges and statutes in many States show this to be the prevailing view. *Henninger* v. *Lomas* (1896) 145 Ind. 287, 298; *Todd* v. *Todd* (1892) 149 Pa. St. 60. This view of the majority, it is believed, rests on a misconception of the effect of the other doctrine. This was forcibly expressed in *Tompert* v. *Tompert*, supra. "A void marriage is incapable of ratification—neither party is bound; the guilty and the innocent are alike at liberty to disregard it. If such marriage as this is void the guilty party may set up his or her fraud to escape the responsibilities incident to the marriage relation." This is not sound. The guilty party clearly has no standing to secure a decree of annulment, and in any collateral proceeding will be estopped to set up his own wrong. Furthermore, it is not true that the marriage, if deemed void, is beyond the possibility of ratification. Even in the case where one of the parties is insane, the marriage, though clearly void, may be ratified upon a subsequent return to sanity. *Cole* v. *Cole* (Tenn. 1857) 5 Sneed 57. The same possibility exists in the case where the ratifying party has been under duress. *Hampstead* v. *Plaistow* (1869) 49 N. H. 84. The contrary cannot be maintained without attacking the entire doctrine of ratification. This is especially undesirable where the sanctity of the family relation and the legitimacy of children are involved. The niceties of logic should not outweigh the requirements of policy when by ratification the real intent of the parties to accept the marriage state is effectuated. It may be argued that since a void marriage ratified amounts to practically the same thing as a voidable marriage not disaffirmed, there is no reason for quarreling with the latter doctrine. But there may be important differences under the two views. As an instance, at common law the husband is entitled to his wife's property and the marriage destroys the right of action for ante-nuptial torts. So that under the majority view, the husband could control the wife's property until the marriage was set aside, and the duress, though destroying every sem-

blance of consent, could be no defense to the wife's heirs when raised in a collateral proceeding.

Though it is believed that the weight of authority is that fraud or duress merely renders a marriage voidable, some writers have gone astray in citing for this proposition cases that decree an annulment of the marriage, their reason evidently being, that a void marriage needs no decree of annulment, but is on account of an inherent defect, null and of no effect. (See cases cited in 79 Am. St. Rep. 371). While it is true that a void marriage requires no decree of court to make it void, yet courts, as a matter of procedure, and properly so, grant a decree of annulment as a matter of form and safety.